REMARKS

Claims 35-37, and 39-47 are currently pending in the application. Claims 35-37 and 40-42 have been amended. Claims 38 and 49 have been canceled. Claim 50 is new. No new matter has been added.

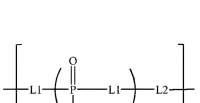
Importantly, the amendments and claim cancelations made herein should not be construed to be an acquiescence to any of the claim rejections. Rather, these actions are being made solely to expedite the prosecution of the above-identified application. The Applicants expressly reserve the right to further prosecute the same or similar claims in subsequent patent applications claiming the benefit of priority to the instant application (35 USC § 120).

Favorable consideration is respectfully requested in view of the foregoing amendment and following remarks.

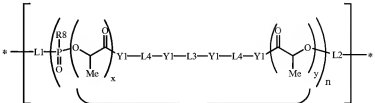
CLAIM REJECTIONS BASED ON 35 U.S.C. § 112 ¶1

Claim 35-47, and 48 stand rejected under 35 U.S.C. § 112 ¶1 based on the Examiner's contention that the claims do not reasonably comply with the written description. The Examiner asserts that removal of "*" from formula (I) introduces new matter. The Applicants respectfully traverse.

While the Applicants disagree with the Examiner's assertion, and point to the claims as originally filed for support of the previously made amendments, the Applicants have amended claim 35 solely to expedite prosecution. Specifically, claim 35 has been amended to replace



$_w$ with



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Support for the claim amendment can be found throughout the application, such as on page 34, paragraph [00154] to page 38, paragraph [00167]; no new matter has been added. Based on this

amendment, the Applicants respectfully request reconsideration and withdrawal of the rejections made under 35 U.S.C. § 112 ¶1.

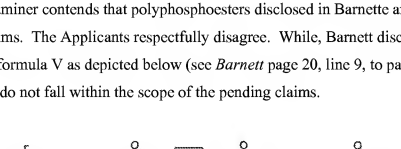
CLAIM REJECTIONS BASED ON 35 U.S.C. § 102(b)

WO 02/04544 to Barnette et al.

Claims 35-37, 39-41, 43-47 and 49 stand rejected under 35 U.S.C. § 102(b) based on the Examiner's contention that the claims are anticipated by WO 02/04544 to Barnette et al. (*Barnett*). The Applicants respectfully traverse.

The Applicants respectfully remind the Examiner that in order to anticipate a claim, a single source must contain all of the elements of the claim. See Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); Atlas Powder Co. v. E.I. duPont De Nemours & Co., 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); In re Marshall, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978). Missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. See Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984).

The Examiner contends that polyphosphoesters disclosed in Barnette anticipate Applicants' claims. The Applicants respectfully disagree. While, Barnett discloses polymers represented by formula V as depicted below (see *Barnett* page 20, line 9, to page 21, line 8), these polymers do not fall within the scope of the pending claims.



Formula V

Abbreviation	All X1	All L1	R8
P(BHET-EOP/TC)	O	-CH_2CH_2-	-OCH_2CH_3
P(BHDPT-EOP/TC)	O	-$CH_2CH(CH_3)_2CH_2$-	-OCH_2CH_3
P(BHDPT-HOP/TC)	O	-$CH_2CH(CH_3)_2CH_2$-	-OC_6H_{13}
P(BHPT-EOP/TC)	O	-$CH_2CH_2CH_2$-	-OCH_2CH_3
P(BHMPT-EOP/TC)	O	$CH_2CH_2(CH_3)CH_2$-	-OCH_2CH_3

Specifically, based on the definitions of the variables of Formula V provided in the table above, none of the polymeric compositions of Formula V contain a polylactide structure as currently claimed by Applicants. In other words, Barnett does not disclose a polyphosphoester polymer having the block structure currently claimed (e.g. there is no moiety which corresponds to L4). Therefore, because WO 02/04544 to Barnett does not teach all the limitations of the claims, the Applicants respectfully request the Examiner withdraw the claim rejections under on 35 U.S.C. § 102(b).

CLAIM REJECTIONS BASED ON 35 U.S.C. § 103(a)

Claims 35-47 and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Barnett. The Applicant respectfully traverses.

To establish a *prima facie* case of obviousness, a number of criteria must be met. For example, all of the limitations of a rejected claim must be taught or suggested in the prior art reference (or references when combined) relied upon by the Examiner; or they must be among the variations that would have been "obvious to try" to one of ordinary skill in the relevant art in light of the cited reference(s). Moreover, one of ordinary skill in the relevant art must have a reasonable expectation of success in light of the cited reference or combination of references. Importantly, the reasonable expectation of success must be found in the prior art, and may not be based on the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991); *see* MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

The Applicants respectfully contend that Barnett does not teach or render "obvious to try" all the limitations of Applicants' claims. As discussed above, Barnett does not teach all the limitations of the pending claims and it would not have been obvious for one of skill in the art to prepare the currently claimed polymers based solely on Barnett. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection for obviousness of claims 35-47 and 49 under on 35 U.S.C. § 103(a) based on Barnett.

FEES

The Applicants believe that the fees required in connection with the filing of this Response have been provided. Nevertheless, the Commissioner is hereby authorized to charge any additional fees due in connection with the filing of this Response to our Deposit Account, No. **06-1448**, Reference **GPT-032.01**.

CONCLUSION

The Applicants believe that the pending claims are in condition for allowance. If a telephone conversation with Applicants' Agent would expedite prosecution of the above-identified application, the Examiner is urged to contact the undersigned.

Respectfully submitted,
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